

Contraband and Searches

310.1 PURPOSE AND SCOPE

The purpose of this policy is to provide clear direction on maintaining the safety and security of the facility by conducting searches, in balance with protecting the rights afforded by the United States Constitution.

The introduction of contraband, intoxicants or weapons into the Shasta County Sheriff's Office facility poses a serious risk to the safety and security of staff, inmates, volunteers, contractors and the public. Any item that is not available to all inmates may be used as currency by those who possess the item, and will allow those in possession of the item to have control over other inmates. Any item that may be used to disengage a lock, other electronic security devices or the physical plant itself, seriously jeopardizes the safety and security of this facility. Carefully restricting the flow of contraband into the facility can only be achieved by thorough searches of inmates and their environment.

Nothing in this policy is intended to prohibit the otherwise lawful collection of trace evidence from an inmate/arrestee.

310.1.1 DEFINITIONS

Definitions related to this policy include:

Contraband - *Contraband is any item possessed by inmates that is declared illegal by law or not specifically approved for inmate possession. Examples of contraband include weapons, escape devices; drugs and/or drug paraphernalia; or authorized items that are possessed in excessive quantities or altered to be utilized in a manner not intended.*

Pat-down search - *A pat down search is a search where staff performs a physical search of a detainee while the detainee is fully clothed.*

CLOTHING SEARCH - *A clothing search is a search of the detainees clothing, including a search of jackets, shirts, pants, pockets, cuffs, etc. while the detainee is fully clothed.*

METAL DETECTOR SEARCH - *A metal detector search involves the detainee passing through a metal detector, or correctional staff waving a metal detector wand over and around a detainee while the detainee is fully clothed.*

Physical body cavity search - *A physical body cavity search involves the physical intrusion into a body cavity or orifice for the purpose of discovering an object concealed in the body cavity.*

Strip search - *A strip search is any search which requires a person to remove or arrange some or all of his/her clothing so as to permit a visual inspection of the underclothing, breasts, buttocks, or genitalia of such person for contraband.*

REASONABLE SUSPICION - *Reasonable suspicion is knowledge sufficient to induce an ordinarily prudent and cautious person under the circumstances to believe criminal activity is or has taken place. A hunch or a guess, without more, does not constitute reasonable suspicion.*

Shasta County Sheriff's Office

Shasta County SO Custody Manual

Contraband and Searches

Concerning strip searches, reasonable suspicion must be based upon specific and articulate facts that the newly arrested detainee is concealing a weapon or contraband, and a strip search will reveal it.

310.2 POLICY

Searches may be instituted as follows:

- To insure the safety of inmates, visitors, and staff
- To discourage theft and waste or destruction of facility property
- To prevent the introduction of weapons or other contraband into the facility
- To detect the presence of weapons, escape devices, or other contraband within the facility Consistent with the rules of evidence in criminal matters Consistent with the provisions of California Penal Code Section 4030

Consistent with the unique security needs of the facility such as:

- Court returns
- New intakes (bookings)
- Perimeter of the building
- Inmate returns from outside the facility
- Interior and housing areas to include the kitchen
- Contact visitor returns to include attorney, clergy, and others
- In instances where information indicates a security or safe concern Consistent with rules and procedures of the facility as may be outlined in other provisions of this policy. In other cases as need and circumstances may warrant, when authorized by the Watch Commander or higher authority.

Clothed searches of inmates should be conducted by an employee of the same sex. Searching of the person of a female prisoner shall be made by a female Correctional Deputy or other suitable woman. In no instance will males physically search females. (4020.8 PC) All searches, room or individual, will conform to the provisions of Section 4021 PC. When an employee enters an inmate's room or cell, it shall only be an employee of the same sex as the inmate or if by an employee of the opposite sex, only in the company of an employee of the same sex as the inmate.

(California Penal Code, Section 4021).

Strip searches are limited under California Penal Code Section 4030. Authorizing or conducting strip, visual or physical body cavity searches in violation of this section is a misdemeanor criminal offense (Refer to Chapter 5.10; Strip Searches). The Watch Commander shall insure that all such searches are consistent with the provisions of this section. Exceptions to the California Penal Code criteria, Sections 4020.8, 4021, and 4030, are not authorized.

Shasta County Sheriff's Office

Shasta County SO Custody Manual

Contraband and Searches

310.2.1 GENERAL

All employees shall share the responsibility to prevent the introduction of contraband into the facility.

Contraband/search procedures shall be implemented and promoted to insure the safety of inmates, staff, and the general public.

310.2.2 PRECAUTIONS

In a custodial environment, searches are an everyday occurrence. Staff members will be in contact with inmates, their clothing and other items that may bring the staff member into contact with inmate body fluids. Staff must avoid complacency during searches. The risk of injury from a sharp object is significant and places the staff member at an extremely high risk of infection. Staff members, while conducting a physical search, shall look before touching when possible. Staff members shall pat down blind areas and not run hands over the blind area. Staff members shall squeeze pockets before placing hands into them. Staff members shall use mirrors when possible.

310.3 CONTRABAND

Allowed items are those:

- Medically cleared
- Issued by the facility
- Provided for in policy
- Purchased from commissary
- Cleared by the Watch Commander or higher authority

Other items or those allowable items found in excessive quantities or being misused may be declared as contraband. All contraband within the facility is subject to seizure.

310.4 PAT-DOWN SEARCHES

All newly arrested detainees booked into the Main Jail shall be subject to a pat down search, a metal detector search if warranted, and to a thorough clothing search in order to retrieve contraband prior to the detainee being placed into a booking cell.

All searches of newly arrested detainees shall be conducted only for the purpose of insuring facility security and the safety of staff and inmates. Under no circumstance shall any form of intake search be conducted based on a request from the arresting law enforcement agency. No intake search shall be conducted as a disciplinary measure or for harassment purposes. All intake searches shall be conducted in a professional manner, affording the detainee as much privacy as possible consistent with jail security. All intake searches shall be conducted by an authorized person of the same sex as the detainee. Under no circumstance shall the intake showering process be utilized to conduct a search of any detainee.

Shasta County Sheriff's Office

Shasta County SO Custody Manual

Contraband and Searches

Inmates that have a mobility-disability that prevents the employment of standard pat search methods shall receive reasonable accommodation.

- (a) When inmates leave their housing units to participate in activities elsewhere in the facility (e.g., recreation yard, medical, program, visiting) and when they return.
- (b) During searches of entire housing units.
- (c) When inmates come into contact with other inmates housed outside of their housing units, such as work details.
- (d) Any time the staff believes the inmates may have contraband on their persons.

310.5 STRIP SEARCHES

Correctional Deputies will generally consider the reason for the search, the scope, intrusion, manner and location of the search, and will utilize the least invasive search method to meet the need for the search.

Strip searches may be conducted on newly arrested detainees only under the limited circumstances described below.

310.5.1 STRIP SEARCHES PRIOR TO PLACEMENT IN A HOUSING UNIT

Newly arrested detainees housed in the booking area until they post bail, undergo detoxification, or are considered for own recognizance release:

Under normal circumstances, newly arrested detainees placed in the booking area until they post bail, undergo detoxification, or are considered for own recognizance release will not be subject to a strip search.

If, however, a detainee presents a serious threat to himself, other inmates, or to jail security and jail staff have reasonable suspicion to believe that he or she is secreting contraband in a manner that requires a strip search, such a search may be performed under the following circumstances:

- Prior to such a search, a Strip Search Authorization Form will be completed as to cause and signed by a jail supervisor.
- All persons conducting or otherwise present during the search shall be the same sex as the detainee being searched.
- The authorized jail personnel conducting the strip search shall not touch the breast, buttocks, or genitalia of the arrestee during the search.

The search shall be conducted in an area where the detainee cannot be observed by any person (including staff and inmates) not participating in the search.

310.5.1A

Shasta County Sheriff's Office

Shasta County SO Custody Manual

Contraband and Searches

Searches of Mobility-Disabled Inmates and Health Care Appliances/Durable Medical Equipment/ Assistive Devices

Inmates who have a mobility-disability that prevents the employment of standard search methods shall receive reasonable accommodation and the sergeant or supervisor/manager in charge will be notified. If a search requires removal of the appliance/device, a compliant inmate shall be allowed to remove the appliance/device and tender it to staff. If forcible removal of an appliance/device from a noncompliant inmate is necessary, health care staff shall be available for consultation regarding the safe removal of the appliance.

310.5.2 NEWLY ARRESTED DETAINEES TO BE HOUSED IN THE JAIL

Newly arrested detainees who are unable to post bail or who do not qualify for own recognizance release and are classified for housing in the Main Jail may be subject to a strip search only under the following conditions:

- The detainee was booked for an offense involving weapons, controlled substances or violence;
- The detainee was booked under California Penal Code section 3056 or booked with a State Parole hold;
- The detainee was booked under California Penal Code section 1203.2 and there are specific articulable facts (i.e. past criminal history), and/or current crime committed.
- The detainee was booked on a charge other than a weapons offense, controlled substance, or violence; however, authorized jail staff determines that reasonable suspicion exists to conduct a strip search;
- As set forth above, the reasonable suspicion must be based upon specific and articulate facts that the newly arrested detainee is concealing a weapon or contraband, and a strip search and will reveal it;
- Prior to such a search, a Strip Search Authorization Form will be completed as to cause and signed by a jail supervisor;
- All persons conducting or otherwise present during the search shall be the same sex as the detainee being searched;
- The authorized jail personnel conducting the strip search shall not touch the breast, buttocks, or genitalia of the arrestee during the search; and
- The search shall be conducted in an area where the detainee cannot be observed by any person (including staff and inmates) not participating in the search.

310.5.3 POST-ARRAIGNMENT INMATES, SENTENCED INMATES, NEW COMMITS, AND INMATES FROM OTHER CORRECTIONAL FACILITIES

To maintain the security of the Main Jail and provide protection for inmates and staff, authorized Correctional Deputies may search post-arraignment detainees, sentenced inmates, new commits, and inmates from other correctional facilities at the time they enter the Shasta County Main Jail.

Shasta County Sheriff's Office

Shasta County SO Custody Manual

Contraband and Searches

The searches of post-arraignment detainees, sentenced inmates, new commits, and inmates from other correctional facilities shall be carried out in compliance with the procedures set forth below.

DEFINITIONS

All jail personnel shall be familiar with the types of searches described below:

POST-ARRAIGNMENT INMATE: *An inmate who has been transported to court to be arraigned, or for a court appearance following his or her arraignment, and thereafter has been transported back to the Main Jail without being released.*

SENTENCED INMATE: *An inmate who has been sentenced to either County incarceration or for a term of imprisonment in State Prison, and thereafter has been transported to the Main Jail without being released. A sentenced inmate does not include a person on parole or probation who is subsequently arrested for either a new offense or a parole/probation violation.*

NEW COMMIT: *An inmate who has been sentenced to either County incarceration or for a term of imprisonment in State Prison and who arrives at the Main Jail for the first time following such commitment. A new commit includes a person who has been allowed some form of release from incarceration between the time he or she received the commitment until the time he or she re-enters the Main Jail following that release.*

INMATE FROM ANOTHER CORRECTIONAL FACILITY: *An inmate who has been incarcerated at another correctional facility as either a pre-sentenced detainee or sentenced prisoner and who is transported to the Main Jail for any reason (including overnight confinement as part of an inter-correctional facility transfer process)*

GENERAL POLICY REGARDING INTAKE SEARCHES

All searches of post-arraignment inmates, sentenced inmates, new commits, and inmates from other correctional facilities shall be conducted only for the purpose of ensuring facility security and the safety of staff and inmates. Under no circumstance shall any form of intake search be performed based on a request from another agency. No search shall be conducted as a disciplinary measure or for harassment purposes. All searches shall be conducted in a professional manner, affording the detainee as much privacy as possible consistent with jail

Shasta County Sheriff's Office

Shasta County SO Custody Manual

Contraband and Searches

security. Under no circumstance shall the intake showering process be utilized to conduct a search of any detainee.

Types of Searches That May be Conducted on Post-Arrestment Inmates, Sentenced Inmates, New Commits, and Inmates From Other Correctional Facilities:

All post-arrestment inmates, sentenced inmates, new commits (other than a civil commitment), and inmates from other correctional facilities entering the Main Jail may be subject to a pat down search, a metal detector search if warranted, a thorough clothing search, a strip search prior to being placed into a booking cell or permanent housing. Inmates under the custody of the Sheriff who are engaged in Alternative Custody functions and who are subsequently rolled up while in custody are sentenced inmates and subject to the provisions below.

In the event that a strip search is conducted on a post-arrestment inmate, a sentenced inmate, a new commit (other than a civil commitment), or an inmate from another correctional facility when he or she enters the Main Jail, the following conditions shall apply:

- A Strip Search Authorization Form will be completed as to cause and signed by a jail supervisor.
- All persons conducting or otherwise present during the search shall be the same sex as the inmate being searched, with the exception of licensed health services clinicians.
- The authorized jail personnel conducting the strip search shall not touch the breast, buttocks, or genitalia of the inmate during the search.
- The search shall be conducted in an area where the detainee cannot be observed by any person (including staff and inmates) not participating in the search.

Persons entering the Shasta County Jail as a civil commitment shall not be strip searched upon entry unless the following conditions apply: the civil commitment presents a serious threat to himself, other inmates, or to jail security and jail staff have reasonable suspicion to believe that he or she is secreting contraband in a manner that requires a strip search or such a search may be performed under the following circumstances:

- Prior to such a search, a Strip Search Authorization Form will be completed as to cause and signed by a jail supervisor;
- All persons conducting or otherwise present during the search shall be the same sex as the detainee being searched; and
- The authorized jail personnel conducting the strip search shall not touch the breast, buttocks, or genitalia of the detainee as during the search.

The search shall be conducted in an area where the detainee cannot be observed by any person (including staff and inmates) not participating in the search.

Physical Body Cavity Searches of Post-Arrestment Inmates, Sentenced Inmates, New Commits, and Inmates From Other Correctional Facilities:

Shasta County Sheriff's Office

Shasta County SO Custody Manual

Contraband and Searches

A physical body cavity search of a post-arraignment inmate, a sentenced inmate, a new commit, or an inmate from another correctional facility may be authorized only with the written approval of the Main Jail Commander and under the direction of a valid search warrant. A physical body cavity search shall be conducted by licensed health services clinicians at a licensed medical facility.

Physical body cavity searches shall not be conducted by medical staff unless there exists a serious medical emergency.

All persons entering the Main Jail who do not meet the definition of a post-arraignment inmate, a sentenced inmate, a new commit, or an inmate from another correctional facility shall be searched in accordance to the Policy for **Intake Searches of Newly Arrested Detainees**.

310.5.4 MODIFIED STRIP SEARCHES AND STRIP SEARCHES OF INMATES IN A HOUSING UNIT

A strip search of an inmate in a housing unit should be conducted when the inmate has entered an environment where contraband or weapons may be accessed. This includes, but is not limited to, the following:

- (a) Upon return from contact visits
- (b) Upon leaving the kitchen, shop, farm, etc.
- (c) Upon return to the housing unit from outside the confines of the facility (court, work-release, work detail, medical visits)

Inmates returning from court with release orders shall not be subject to strip searches or modified strip searches unless the reasonable suspicion exists based on specific and articulable facts that the person is concealing a weapon or contraband. The inmate should not be returned to the housing unit, except for retrieving his/her personal property under the direct visual supervision of staff.

Staff members may conduct modified strip searches and strip searches of inmates outside the above listed circumstances only with supervisor approval. Staff members and supervisors must make a determination to conduct a strip search by balancing the scope of the particular search, intrusion, the manner in which it is conducted, the justification for initiating it and the place in which it is conducted. Less invasive searches should be used if they would meet the need for the search. For example, a pat-down or modified strip search may be sufficient as an initial effort to locate a larger item, such as a cell phone.

The staff member conducting a modified strip or strip search outside the above listed circumstances shall:

- Document in writing the facts that led to the decision to perform a strip search of the inmate.
- Document the reasons less intrusive methods of searching were not used or were insufficient.

Shasta County Sheriff's Office

Shasta County SO Custody Manual

Contraband and Searches

- Document the supervisor's approval.
- Document the time, date and location of the search.
- Document the names of staff present, their sex and their roles.
- Itemize in writing all contraband and weapons discovered by the search.
- Process all contraband and weapons in accordance with the office's current evidence procedures.
- If appropriate, complete a crime report and/or disciplinary report.
- Ensure the completed documentation is placed in the inmate's file. A copy of the written authorization shall be retained and made available to the inmate or other authorized representative upon request.

310.6 TRANSGENDER SEARCHES

Staff shall not search or physically examine a transgender or intersex inmate for the sole purpose of determining genital status (see Prison Rape Elimination Act Policy for transgender and intersex definitions). If genital status is unknown, it may be determined during conversations with the inmate, by reviewing medical records or, if necessary, by obtaining that information as part of a broader medical examination conducted in private by a qualified health care professional (28 CFR 115.15).

310.6.1 TRANSGENDER STRIP SEARCH

On July 6, 2017, The Office of the Attorney General published an opinion that states a person's "sex" as used in Penal Code section 4030, subdivision (K) refers to the searched person's gender, including the person's gender identity and gender expression. [See attachment: PC Code 4030 - Attorney General opinion.pdf](#)

The following is the procedure for complying with the the Attorney Generals opinion during a strip search of a transgender inmate.

- The booking officer shall ask each intake if they identify as a male or female during the booking process.
- The booking officer shall make sure the gender listed in booking management system matches the inmates response.
- The booking folder used will be color appropriate to match the inmates gender.
- If the inmate will remain in custody and meets the criteria to be strip searched, the booking officer will advise the inmate they will be strip searched by an officer of the same sex. If the inmate is in the process of transitioning, the officer will ask the inmate if they preferred to be searched by a male of female Deputy.
- Two Deputies of the same sex should be present during a the strip search of a transitioning inmate.

Shasta County Sheriff's Office

Shasta County SO Custody Manual

Contraband and Searches

- A jail incident report documenting the search shall be written prior to completion of the the Deputy's shift.

310.7 PHYSICAL BODY CAVITY SEARCH

A physical body cavity search may be authorized only with written approval of the Main Jail Commander and under the direction of a valid search warrant. A physical body cavity search shall be conducted by licensed health services clinicians at a licensed medical facility or a hospital not employed by the Sheriff or medical contract provider. Physical body cavity searches shall not be conducted by medical staff unless there exists a serious medical emergency.

310.8 USE OF FORCE TO REMOVE CLOTHING

In the event a newly arrested detainee or a housed inmate refuses to comply with the strip search policy set forth above, force *shall not* be utilized unless each of the following conditions are met:

- The non-compliant inmate, if he or she does not pose a significant threat to self, to jail staff, or jail security, shall be placed in a holding cell, counseled, and provided a cool down period;
- The Main Jail Watch Commander shall talk with the inmate and thereafter make the determination whether force shall be utilized to insure search policy requirements; and
- All staff involved in the use of force shall submit timely and appropriate documentation concerning the incident by way of a Jail Incident Report.

NOTE: The above policy applies when a newly arrested detainee or a housed inmate refuses to comply with the strip search/visual body cavity search policy and no other problems exist. This policy does not supersede or limit the policy relating to safety cell placements, in which, under certain circumstances, the inmates clothing may be removed.

310.9 HOUSING UNIT SEARCHES

REFERENCE:

Title 15, Section 1280, Policy 527.6: Facility Sanitation, Safety, and Maintenance

PURPOSE

To establish a consistent method to conduct routine, random searches of inmate housing units to promote safety, security and order; to prevent and/or reduce contraband, and to recover unauthorized issue, including excessive clothing and linens.

Housing unit searches shall occur as directed by a supervisor. These searches should include all of the living spaces occupied by inmates. Housing unit searches should be scheduled in a manner that does not create a pattern where the inmates can predict such search. The primary purpose of the search is to detect and prevent contraband, deter window and wall coverings, detect attempts to alter the cell in support of escape or self-harm, and remove extra issue.

Shasta County Sheriff's Office

Shasta County SO Custody Manual

Contraband and Searches

During a housing unit search

- The on duty Watch Commander shall be notified of all housing unit searches. Since each situation is unique, the Correctional Deputy assigned to the housing unit will be in charge of staff participation and supervising the search, unless the Watch Commander is on scene. The Correctional Deputy in charge of the housing unit will provide the Watch Commander with their plan and/or system for completing the search in an appropriate and timely manner;
- The Correctional Deputy in charge of the housing unit search will brief the Watch Commander with their plan designating a separate area where strip searches are conducted;
- After the Watch Commander has given the approval for the search, the Correctional Deputy in charge of the housing unit search will provide all assisting Correctional Deputies with the final plan for conducting the housing unit search;
- All Correctional Deputies conducting individually pat search, strip search, or metal detector use on inmates, shall be done by the same sex as the inmate;
- All inmates should vacate their living areas;
- Inmates should be escorted to a separate holding area, such as the recreation yard or booking holding cells;
- Staff shall search the living areas of the inmates, including bedding, personal storage areas, bunks and other areas with inmate access;
- A search of the cell will consist of conducting an inventory of all clothing and linens; Any extra issue will be confiscated.
- Cells shall be clean. No window coverings are permitted. No storage of fruit or food items issued at meal times will be allowed to remain in the housing units as these items must be eaten within 15 minutes of being issued at meal time.
- Other common restrictions include: 2 books, 1 magazine, 1 newspaper, and 1 religious book;
- Any contraband items found during the search will be confiscated and placed on the inmates property or discarded;
- Any weapons or contraband located shall be processed in accordance with the current evidence procedures. Staff shall attempt to identify the inmate who possessed the contraband and file appropriate inmate disciplined and/or criminal report;
- Any alcoholic beverage possessed by inmates shall be seized and the appropriate inmate disciplined and/or criminal charges filed;
- Any authorized item found in excess of the limited quantity (e.g. food items, newspapers) shall be seized and placed on the inmate's property.

Shasta County Sheriff's Office

Shasta County SO Custody Manual

Contraband and Searches

At the conclusion of the housing unit search, closely supervised inmate workers should clean the unit. All authorized inmate personal property shall be respected and living areas should be returned to an orderly condition. The Watch Commander will be notified immediately following the search and made aware of any significant items found such as weapons, dangerous contraband, or safety or security issues. The Correctional Deputy assigned to the housing unit, will complete an Incident Report. All inmate names housed in the unit at the time of the search, will be listed in the report.

Attachments

PC Code 4030 - Attorney General opinion.pdf

TO BE PUBLISHED IN THE OFFICIAL REPORTS

OFFICE OF THE ATTORNEY GENERAL
State of California

XAVIER BECERRA
Attorney General

OPINION	:	No. 17-302
	:	
of	:	July 6, 2017
	:	
XAVIER BECERRA	:	
Attorney General	:	
	:	
CATHERINE BIDART	:	
Deputy Attorney General	:	
	:	

THE HONORABLE VICKI L. HENNESSY, Sheriff of the City and County of San Francisco, has requested an opinion on the following question:

Penal Code section 4030, subdivision (k), specifies that any person (other than medical staff) who conducts, or is present at, or is within sight of, a strip search, body cavity search, or body scan of specified prearrestment detainees must be the “same sex” as the person searched. Does the term “sex,” as used in this provision, refer to the searched person’s gender, including the person’s gender identity and gender expression?

CONCLUSION

“Sex” as used in Penal Code section 4030, subdivision (k) refers to the searched person’s gender, including the person’s gender identity and gender expression.

ANALYSIS

Penal Code section 4030¹ governs strip searches, body cavity searches, and body scans conducted on prearrest detainees, including specified minors, arrested for an infraction or misdemeanor.² Subdivision (k) of the statute provides that any person (other than medical staff) who conducts, is present at, or is within sight of, the search, must be the “same sex” as the person being searched. We have been asked whether the term “sex,” as used in subdivision (k), refers to the gender of the person searched, including the person’s gender identity and gender expression. For the reasons that follow, we conclude that it does.

Subdivision (k) states:

(1) A person conducting or otherwise present or within sight of the inmate during a strip search or visual or physical body cavity search shall be of the same sex as the person being searched, except for physicians or licensed medical personnel.

(2) A person within sight of the visual display of a body scanner depicting the body during a scan shall be of the same sex as the person being scanned, except for physicians or licensed medical personnel.³

To ascertain the Legislature’s intent, we first look to the ordinary meaning of the words of the statute.⁴ Although section 4030 and case law do not define the term, we find that the word “sex” is consistently defined throughout the codes to mean “gender,” and “gender” is consistently defined to mean “sex” and includes “gender identity and gender expression.”⁵

The Penal Code itself defines “gender” as “sex,” including “gender identity and gender expression;” “gender expression” means “a person’s gender-related appearance and behavior whether or not stereotypically associated with the person’s assigned sex at

¹ All subsequent undesignated section references are to the Penal Code.

² Pen. Code, § 4030, subds. (b), (k).

³ Pen. Code, § 4030, subd. (k).

⁴ *Wilcox v. Birtwhistle* (1999) 21 Cal.4th 973, 977; Pen. Code, § 7, subd. (16).

⁵ E.g., Civ. Code, §§ 51, subd. (e)(5); Ed. Code, §§ 210.766260.7; Gov. Code, § 12926, subd. (r)(2); Ins. Code, §§ 10140, subd. (h); Pen. Code, § 422.56, subd. (c).

birth.”⁶ This definition applies throughout the Penal Code “unless an explicit provision of law or the context clearly requires a different meaning.”⁷ We find no contrary provision or context here.

In addition, the legislative history of section 4030 strongly supports a conclusion that “sex” means “gender.” Section 4030 has been amended twice since its enactment in 1984.⁸ Legislative committee analyses of the first bill that amended the statute reveal an intent⁹ that “sex” means “gender.”¹⁰ The bill language, like the statute, sets forth a same-sex search requirement, but the analyses invariably describe it as a “same-gender” search requirement: a person who conducts, is present, or within sight of the search must be the same gender as the person searched.¹¹ As the committee analyses consistently interpret the term “sex” to mean “gender,” we believe the intent for “sex” to mean “gender” is clear. And again, in the Penal Code, “gender” means “sex” and includes “gender identity and gender expression,” unless clearly indicated otherwise.¹²

⁶ Pen. Code, § 422.57.

⁷ Pen. Code, § 422.57.

⁸ Stats. 2016, ch. 162, § 1 (authorizing use of visual body scanner); Stats. 2015, ch. 464, § 1 (persons present during search include persons within view of search); Stats. 1984, ch. 35, § 2 (enacting Penal Code section 4030).

⁹ *Southland Mechanical Constructors Corp. v. Nixen* (1981) 119 Cal.App.3d 417, 427 (committee reports presumed to evidence legislative intent).

¹⁰ Neither the legislative history of section 4030 as enacted, nor that of the second bill that amended the statute, shed light on the intended meaning of “sex.”

¹¹ See, e.g., Off. of Sen. Floor Analysis, 3d reading of Assem. Bill 303 (2015–2016 Reg. Sess.), August 31, 2015, p. 5 (“bill maintains the existing practice of permitting strip searches of inmates prior to them entering the general population and simply specifies that all persons within view of the search must also be of the same gender”); Sen. Comm. on Pub. Saf., analysis of Assem. Bill 303 (2015–2016 Reg. Sess.), June 9, 2015, p. 8 (same); Assem. Comm. on Approps., analysis of Assem. Bill 303 (2015–2016 Reg. Sess.), April 29, 2015, p. 2 (“bill mandates that these searches be conducted out of view of all persons not of the same gender as the person being searched”); Assem. Comm. on Pub. Saf., analysis of Assem. Bill 303 (2015–2016 Reg. Sess.), April 21, 2015, pp. 4-5 (describing bill as “small modification of existing law, which already requires that persons conducting strip searches of persons in police custody must be of the same gender as the person being searched,” and explaining “bill simply specifies that all persons within view of the search must also be of the same gender”).

¹² Pen. Code, §§ 422.56, subd. (c), 422.57.

Accordingly, we conclude that “sex” as used in Penal Code section 4030, subdivision (k) refers to the searched person’s gender, including the person’s gender identity and gender expression.
